

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SUSAN ARKLE and STEPHEN ARKLE,  
wife and husband and the marital community  
composed thereof,

Plaintiffs,

vs.

MACY'S WEST STORES, INC., an Ohio  
Corporation, d/b/a MACY'S; and  
KELLERMEYER BERGENSONS SERVICES,  
LLC, a Delaware Limited Liability Corporation,  
d/b/a KELLERMEYER BUILDING  
SERVICES,

Defendants.

Case No.

DECLARATION OF KENNETH M.  
ROESSLER IN SUPPORT OF  
DEFENDANTS' NOTICE OF REMOVAL  
OF ACTION

(REMOVED FROM KING COUNTY  
SUPERIOR COURT, CAUSE NO. 12-2-  
33951-1 SEA)

I, KENNETH M. ROESSLER, solemnly declare as follows:

1. I am over eighteen (18) years of age and am competent to testify to the  
matters contained in this Declaration. I am the attorney for defendants Macy's and  
Kellermeyer Building Services in this matter. I submit this Declaration and the attached

1 Exhibits in support of defendants' Notice of Removal of plaintiff's state court action to this  
2 Court under 28 U.S.C. §§ 1332, 1441 and 1446, et seq.

3 2. Attached as Exhibit 1 to this Declaration is a copy of the Complaint that  
4 plaintiffs filed with the King County Superior Court on October 17, 2012.

5 3. Attached as Exhibit 2 to this Declaration is a copy of the Summons that  
6 plaintiffs filed with the King County Superior Court on October 17, 2012.

7 4. Attached as Exhibit 3 is a copy of the Service of Process Transmittal from  
8 CT Corporation System, the registered agent for defendant Kellermeyer Bergensons  
9 Services, LLC showing that this defendant was served with the plaintiffs' Complaint and  
10 Summons on October 19, 2012.

11 5. Attached as Exhibit 4 is a copy of the Service of Process Transmittal from  
12 Corporation Service Company (CSC), the registered agent for defendant Macy's West  
13 Stores, Inc., showing that this defendant was served with the plaintiffs' Complaint and  
14 Summons on October 19, 2012.

15 6. Both of the defendants are out-of-state corporate entities whose principal  
16 places of business are outside the state of Washington. Macy's West Stores, Inc. is an Ohio  
17 corporation with its principal place of business in Ohio. Kellermeyer Bergensons Services,  
18 LLC is a Delaware limited liability company whose principal place of business is in Ohio.  
19 Plaintiffs are residents of King County, Washington, as alleged on page 1 of their  
20 Complaint. The citizenship of the two defendants is completely diverse from that of the  
21 plaintiffs.  
22  
23

8. Attached as **Exhibit 6** to this Declaration is a copy of the Notice of Appearance for Defendant Macy's West Stores, Inc., filed in state court.

9. My client, Macy's West Stores, Inc., received a 400-page ER 408 settlement demand package from plaintiffs' counsel Scott A. Hughes, including a July 18, 2012 demand letter, making a settlement demand of \$125,000. The demand letter alleges that plaintiff has been "in a great deal of pain since the accident" over three years ago; that she is "unable to perform simple house chores ... because it is stressful on her back," and she alleges \$25,597.33 in medical expenses has been incurred because of the November 12, 2009 incident. The amount in controversy is thus well in excess of the jurisdictional minimum of \$75,000. In order to avoid potential violations of HIPAA and privacy, defense counsel is refraining from attaching a copy of the plaintiff's demand letter or exhibits thereto to this Declaration.

10. My office is paying online the amount of \$350.00 as payment of the civil filing fee for this removal.

10. My office is paying online the amount of \$350.00 as payment of the civil filing fee for this removal.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington this 15th day of November, 2012.

  
Kenneth M. Roessler

# **EXHIBIT 1**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

SUSAN ARKLE and STEPHEN ARKLE,  
wife and husband and the marital  
community composed thereof,

Plaintiffs,

v.

MACY'S WEST STORES, INC., an Ohio  
Corporation, d/b/a MACY'S; and  
KELLERMEYER BERGENSONS  
SERVICES, LLC, a Delaware Limited  
Liability Corporation, d/b/a  
KELLERMEYER BUILDING SERVICES,

Defendants.

NO. 12-2-33951-1 SEA

COMPLAINT FOR DAMAGES

I

PARTIES AND JURISDICTION

1.1 Plaintiffs Susan Arkle and Stephen Arkle are, and at all times material hereto, were wife and husband and constitute a marital community. At all times material hereto, Plaintiffs Arkle were residents of King County, Washington.

1.2 On information and belief, Defendant, Macy's West Stores, Inc., d/b/a Macy's (hereinafter referred to as "Macy's"), is an Ohio corporation authorized to do business in the State of Washington. Defendant Macy's conducts business in Redmond, King County, Washington. Defendant Macy's is and was responsible for the maintenance and safety of the property where the

COMPLAINT - 1

Hughes | Robbins, P.S.  
Attorneys at Law  
2000 112th Avenue N.E.  
Bellevue, WA 98004  
(425) 455-0390; FAX (425) 637-1214

1 injury complained of herein occurred.

2 1.3 On information and belief, Defendant, Kellermeyer Bergensons Services, LLC, d/b/a  
3 Kellermeyer Building Services, is a Delaware limited liability corporation authorized to do business  
4 in the State of Washington. Defendant, Kellermeyer Bergensons Services, conducts business in King  
5 County, Washington, and was a contractor for Defendant Macy's at the time of the injury complained  
6 of herein occurred.

7 1.4 All acts complained of herein occurred in King County, Washington.  
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10 **FACTS**

11 2.1 Plaintiffs realleges each and every allegation contained in the preceding paragraphs.

12 2.2 On or about November 12, 2009, plaintiff Susan Arkle was a business invitee at the  
13 Macy's store in Redmond, King County, Washington. As Mrs. Arkle was exiting the store restroom,  
14 she slipped on a puddle of standing water which caused her to fall to the floor. At the direction of  
15 Defendant Macy's, an employee or contractor had previously been cleaning the floors and failed to  
16 adequately post warning signs to notify customers that the floor was wet. This fall caused injuries as  
17 indicated below.  
18

19 3

20 **CAUSE OF ACTION - NEGLIGENCE**

21 3.1 Plaintiffs realleges each and every allegation contained in the preceding paragraphs.

22 3.2 The injuries and damages alleged herein were due to the negligence and acts of the  
23 defendants listed above and their agents, including but not limited to the following particulars:

24 3.2.1 In failing to exercise reasonable care to protect persons on the defendants'  
25 property from injury when the defendants knew or should have known of the danger in connection  
26 herewith;

27 3.2.2 In failing to exercise reasonable care with regard to the premises as to all  
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COMPLAINT - 2

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2000 112th Avenue N.E.  
Bellevue, WA 98004  
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1 persons who might be expected to come upon same;

2 3.2.3 In failing to maintain the property in a reasonable manner;

3 3.2.4 In failing to maintain the building's restroom floor in such a manner as to  
4 prevent falls by persons who might be expected to walk upon or use such floor; and

5 3.2.5 In failing to provide adequate warning as to potentially dangerous conditions  
6 including, but not limited to, slippery floors on the subject property.

7 3.3 As a direct and proximate result of defendants' negligence, plaintiffs have suffered  
8 damages as set forth below.

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11 **CAUSE OF ACTION - RESPONDEAT SUPERIOR**

12 4.1 Plaintiffs reallege each and every allegation contained in the preceding paragraphs.

13 4.2 Macy's Risk Management Department contents that defendant Kellermeyer Bergensons  
14 Services is responsible for the actions of its employees and agents and for the injuries thereby caused  
15 to the plaintiffs under the Doctrine of Respondeat Superior.

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18 **DAMAGES**

19 5.1 Plaintiffs reallege each and every allegation contained in the preceding paragraphs.

20 5.2 As a direct and proximate result of the negligence of defendants, plaintiffs have  
21 suffered damages which include, but are not limited to: past, present and future medical expenses;  
22 past, present and future physical pain and suffering; reduction in the capacity to enjoy life; loss of  
23 consortium and other miscellaneous expenses related to the plaintiff Susan Arkle's injuries; and such  
24 other and further special and general damages as will be proven at trial.

6


PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against defendants in amounts to be proven at trial, to fully and fairly compensate plaintiff for those damages that are set forth above, together with pre- and post-judgment interest, costs, attorneys' fees, and such other and further relief as the court deems just and appropriate under the circumstances.

DATED this 17th day of October, 2012.

HUGHES | ROBBINS, P.S.

By

  
Scott A. Hughes  
WSBA #28052  
Attorney for Plaintiffs

COMPLAINT - 4

Hughes | Robbins, P.S.  
Attorneys at Law  
2000 112th Avenue N.E.  
Bellevue, WA 98004  
(425) 455-0390; FAX (425) 637-1214



# **EXHIBIT 2**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

SUSAN ARKLE and STEPHEN ARKLE,  
wife and husband and the marital  
community composed thereof,

Plaintiffs,

v.

MACY'S WEST STORES, INC., an Ohio  
Corporation, d/b/a MACY'S, and  
KELLERMEYER BERGENSONS  
SERVICES, LLC, a Delaware Limited  
Liability Corporation, d/b/a  
KELLERMEYER BUILDING SERVICES,

Defendants.

NO. 12-2-33951-1 SEA

SUMMONS

TO: MACY'S WEST STORES, INC and KELLERMEYER BERGENSONS  
SERVICES, LLC, Defendants.

A lawsuit has been started against you in the above-entitled court by plaintiffs Susan and Stephen Arkle. The plaintiffs claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within twenty (20) days after the service of this summons, excluding the day of service, or within sixty (60) days of service if made upon you outside of the State of Washington, or a default judgment may be entered against you without notice. A default judgment is one entitling plaintiffs to the damages being sought in the complaint because you failed to respond. If a notice of appearance on your

SUMMONS - 1

HUGHES | ROBBINS, P.S.  
Attorneys at Law  
2000 112th Avenue N.E.  
Bellevue, WA 98004  
(425) 455-0390; FAX (425) 637-1214

1 behalf is served on the undersigned person, you must receive notice before a default judgment can  
2 be entered.


3 You can demand that plaintiffs file this lawsuit with the court. If you do so, the demand  
4 must be in writing and must be served upon the person signing this summons. Within fourteen  
5 (14) days after you serve the demand, the plaintiffs must file this lawsuit with the court, or the  
6 ~~service on you of this summons and complaint will be void.~~

7 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
8 that your written response, if any, may be served on time.

9 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
10 of Washington.

11 DATED this 17th day of October, 2012.

12  
13 HUGHES | ROBBINS, P.S.

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15 By:   
16 Scott A. Hughes, WSBA# 28052  
17 Attorney for Plaintiff  
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SUMMONS - 2

HUGHES | ROBBINS, P.S.  
Attorneys at Law  
2000 112th Avenue N.E.  
Bellevue, WA 98004  
(425) 455-0390; FAX (425) 637-1214

# **EXHIBIT 3**



**Service of Process**

**Transmittal**

10/19/2012

CT Log Number 521448911

Human Resources

OCT 29 2012

**TO:** Judy Sobota, General Liability Admin.  
Kellermeyer Building Services Inc.  
1575 Henthorne Drive  
Maumee, OH 43537

**RE:** Process Served in Washington

**FOR:** Kellermeyer Bergensons Services, LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Susan Arkle and Stephen Arkle, etc., Pltfs. vs. Macy's West Stores, Inc., etc., and Kellermeyer Bergensons Services, LLC, etc., Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint, Notice(s), Case Schedule, Order,

**COURT/AGENCY:** King County - Superior Court, WA  
Case # 122339511SEA

**NATURE OF ACTION:** Personal Injury - Slip/Trip and Fall - November 12, 2009 - Macy's Store in Redmond, King County, Washington

**ON WHOM PROCESS WAS SERVED:** CT Corporation System, Olympia, WA

**DATE AND HOUR OF SERVICE:** By Process Server on 10/19/2012 at 14:31

**JURISDICTION SERVED:** Washington

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, excluding the day of service

**ATTORNEY(S) / SENDER(S):** Scott A. Hughes  
Hughes|Robbins, P.S.  
2000 112th Avenue N.E.  
Bellevue, WA 98004  
(425) 455-0390

**ACTION ITEMS:** CT has retained the current log, Retain Date: 10/20/2012, Expected Purge Date: 10/25/2012  
Image SOP  
Email Notification, Judy Sobota jsobota@kbs-services.com  
Email Notification, Nick Feasel nickf@kbs-clean.com

**SIGNED:** CT Corporation System  
**PER:** Michele Rowe  
**ADDRESS:** 505 Union Avenue SE  
Suite 120  
Olympia, WA 98501  
**TELEPHONE:** 360-357-6794

Page 1 of 1 / RF

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

# **EXHIBIT 4**



CORPORATION SERVICE COMPANY\*

## Notice of Service of Process

NJP / PERINJ  
Transmittal Number: 10453662  
Date Processed: 10/22/2012

Primary Contact: Cindy Price  
Macy's, Inc.  
7 West Seventh St.  
Cincinnati, OH 45202

Copy of transmittal only provided to: Rob Diesel

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Entity:	Macy's West Stores, Inc. Entity ID Number 2199852
Entity Served:	Macy's West Stores, Inc., d/b/a Macy's
Title of Action:	Susan Arkle vs. Macy's West Stores, Inc., d/b/a Macy's
Document(s) Type:	Summons/Complaint
Nature of Action:	Personal Injury
Court/Agency:	King County Superior Court, Washington
Case/Reference No:	12-2-33951-1 SEA
Jurisdiction Served:	Washington
Date Served on CSC:	10/19/2012
Answer or Appearance Due:	20 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Scott A. Hughes 425-455-0390

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

**To avoid potential delay, please do not send your response to CSC**  
*CSC is SAS70 Type II certified for its Litigation Management System.*  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)

10/25/2012

# **EXHIBIT 5**



Honorable Julie Spector

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

SUSAN ARKLE and STEPHEN ARKLE, wife  
and husband and the marital community  
composes thereof,

Plaintiffs,

vs.

MACY'S WEST STORES, INC., an Ohio  
Corporation, d/b/a MACY'S; and  
KELLERMEYER BERGENSONS SERVICES,  
LLC, a Delaware Limited Liability Corporation,  
d/b/a KELLERMEYER BUILDING  
SERVICES,

Defendants.

No. 12-2-33951-1 SEA

NOTICE OF APPEARANCE

TO: Clerk of the Court;

AND TO: Plaintiffs' attorneys of record

**DEFENDANT KELLERMEYER BERGENSONS SERVICES, LLC** d/b/a  
KELLERMEYER BUILDING SERVICES, a Delaware limited liability corporation, without  
waiving jurisdiction or service of process or any affirmative defense, enters its appearance in  
the above-entitled action through Forsberg & Umlauf, P.S., its attorneys of record in this case,  
and requests that all further pleadings herein, exclusive of process, be served upon said  
attorneys at their office address below.

NOTICE OF APPEARANCE – PAGE 1

720986 / 235.0577

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164-1039  
(206) 689-8500 • (206) 689-8501 FAX

1 DATED this 8<sup>th</sup> day of November, 2012.

2 FORSBERG & UMLAUF, P.S.

3  
4 By: 

5 Roy A. Umlauf, WSBA #15437  
6 Attorneys for Defendant Kellermeyer  
7 Bergensons Services, LLC d/b/a  
8 Kellermeyer Building Services  
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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing NOTICE OF APPEARANCE on the following individuals in the manner indicated:

Mr. Scott Hughes  
Hughes Robbins  
2000 112th Avenue, N.E.  
Bellevue, WA 98004-2913  
Facsimile: 425-637-1214  
☒ (X) Via U.S. Mail  
☐ ( ) Via Facsimile  
☐ ( ) Via Hand Delivery  
☒ (X) Via Email

SIGNED this 9th day of November, 2012, at Seattle, Washington.

  
Shawn G. Menning

# **EXHIBIT 6**

Honorable Julie Spector

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

SUSAN ARKLE and STEPHEN ARKLE,  
wife and husband and the marital community  
composed thereof,

Plaintiffs,

vs.

MACY'S WEST STORES, INC., an Ohio  
Corporation, d/b/a MACY'S; and  
KELLERMEYER BERGENSONS SERVICES,  
LLC, a Delaware Limited Liability Corporation,  
d/b/a KELLERMEYER BUILDING  
SERVICES,

Defendants.

No. 12-2-33951-1 SEA

NOTICE OF APPEARANCE

TO: Clerk of the Court;

AND TO: Plaintiffs' attorney of record, Scott A. Hughes

**DEFENDANT MACY'S WEST STORES, INC.**, an Ohio corporation, d/b/a Macy's,  
without waiving jurisdiction or service of process or any affirmative defense, enters its  
appearance in the above-entitled action through Forsberg & Umlauf, P.S., its attorneys of

NOTICE OF APPEARANCE – PAGE 1

723336 / 235.0577

**FORSBERG & UMLAUF, P.S.**  
ATTORNEYS AT LAW  
901 FIFTH AVENUE • SUITE 1400  
SEATTLE, WASHINGTON 98164-1039  
(206) 689-8500 • (206) 689-8501 FAX

1 record in this case, and requests that all further pleadings herein, exclusive of process, be  
2 served upon said attorneys at their office address below.

3 DATED this 14th day of November, 2012.

4 FORSBERG & UMLAUF, P.S.

5  
6 By: 

Roy A. Umlauf, WSBA #15437

Kenneth M. Roessler, WSBA # 31886

7 Attorneys for Defendants  
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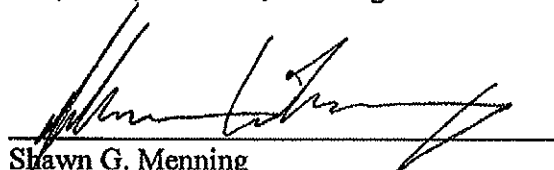
**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing NOTICE OF APPEARANCE on the following individuals in the manner indicated:

Mr. Scott Hughes  
Hughes Robbins  
2000 112th Avenue, N.E.  
Bellevue, WA 98004-2913  
Facsimile: 425-637-1214  
☒ (X) Via U.S. Mail  
☐ ( ) Via Facsimile  
☐ ( ) Via Hand Delivery  
☒ (X) Via Email

SIGNED this 14th day of November, 2012, at Seattle, Washington.

  
Shawn G. Menning